Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS

No. 83-904

In the Supreme Court of the United States

October Term, 1983

THE STATE OF OHIO,
Petitioner,

vs.

KENNETH M. JOHNSON,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

2/13/80 SECRET INDICTMENT returned by the Lake County Grand Jury filed.

11/26/80 DEFENDANT'S WRITTEN PLEA OF GUILTY to the charge of Involuntary Manslaughter filed.

11/26/80 DEFENDANT'S WRITTEN PLEA OF GUILTY to the charge of Grand Theft filed.

12/10/80 JOURNAL ENTRY AND OPINION of the Court of Common Pleas of Lake County accepting defendant's pleas of guilty to the charges of Involuntary Manslaughter and Grand Theft filed.

12/10/80 JOURNAL ENTRY of the Court of Common Pleas of Lake County sentencing defendant to a term of three to ten years in prison for Involuntary Manslaughter and to a term of two to five years for Grand Theft, sentences to run consecutively, filed.

3/31/81 JUDGMENT ENTRY AND OPINION granting defendant's Motion to Dismiss filed.

4/1/82 JUDGMENT ENTRY AND OPINION of the Court of Appeals of Ohio Eleventh District, affirming the decision of the Court of Common Pleas in Case Number 8-221 filed.

8/31/83 JUDGMENT ENTRY, ORDER AND OPINION of the Ohio Supreme Court in Case Number 82-657, affirming the decision of the Ohio Court of Appeals, Eleventh District, filed.

SECRET INDICTMENT

Crim. Rule 6, 7

(Filed February 13, 1979)

COURT OF COMMON PLEAS

THE STATE OF OHIO)
LAKE COUNTY, ss.)

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 25th day of January, 1979, at Mentor-on-the-Lake City, Lake Co., Ohio, one KENNETH M. JOHNSON did purposely cause the death of Thomas David Hill, contrary to and in violation of Section 2903.02 of the Ohio Revised Code and against the peace and dignity of the State of Ohio. This act is punishable by an indefinite term of imprisonment of not less than Fifteen (15) Years to Life, and a fine not more than $15,000.00.

COUNT TWO

On or about the 25th day of January, 1979, in the City of Mentor-on-the-Lake, County of Lake, and State of Ohio, one KENNETH M. JOHNSON did cause the death of Thomas David Hill as a proximate result of the said KENNETH M. JOHNSON's committing or attempting to commit a misdemeanor. This act constitutes a felony of the third degree, contrary to and in violation of Section 2903.04 of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

COUNT THREE

On or about the 25th day of January, 1979, in the City of Mentor-on-the-Lake, County of Lake, and State of Ohio, one KENNETH M. JOHNSON, together with Denise Elaine DiPaola and Michael D. Polensek, did, in attempting or committing a theft offense, as defined in Section 2913.01 of the Revised Code, or in fleeing immediately after such attempt or offense, have a deadly weapon, to-wit: a .380-Caliber Automatic Pistol, on or about his person or under his control, contrary to and in violation of Section 2911.01 of the Ohio Revised Code and against the peace and dignity of the State of Ohio. This constitutes a felony of the first degree.

COUNT FOUR

On or about the 25th day of January, 1979, in the City of Mentor-on-the-Lake, County of Lake, and State of Ohio, one KENNETH M. JOHNSON, together with Denise Elaine DiPaola and Michael D. Polensek, did, with purpose to deprive the owner, Thomas David Hill, of property, to-wit: a Portable Television; Clothing; and Miscellaneous Clothes and Property, knowingly, obtain or exert control over said property without the consent of Thomas David Hill, or a person authorized to give consent, the value of said property being $150.00 or more, a fourth-degree felony, against the peace and dignity of the State of Ohio in violation of the Ohio Revised Code, Title 29, Section 2913.02.

TRANSCRIPT OF PROCEEDINGS

(Hearing Commenced October 9, 1980)

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title Omitted in Printing)

* * * * *

[2] BE IT REMEMBERED, that heretofore, to-wit, on Thursday, October 9, 1980, being one of the regular days of said Court, before the Honorable Paul H. Mitrovich, one of the Judges of the said Court, the above-entitled cause came on for trial upon the pleadings heretofore filed herein.

[3] Mr. Hawkins: Your honor, we are here for the purposes of arraignment. Mr. Johnson is present in court and is represented by counsel, Albert Purola. He has got a four count indictment by the Lake County Grand Jury, one for murder, one for involuntary manslaughter, the third is aggravated robbery and the fourth is grand theft.

The Court: Mr. Purola?

Mr. Purola: Your honor, the defendant was served with a copy of the indictment not quite 24 hours ago, but we waive the 24 hour requirement because the defendant studied the indictment with his counsel, would waive any defects in service in the indictment and waive the reading of the indictment at this time.

Mr. Johnson: Your honor, I plead guilty to counts 2 and 4; not guilty to counts 1 and 3.

Mr. Purola: That is our desire.

The Court: Tell me that again? [4] You shocked me.

Mr. Purola: Pleading guilty to counts 2 and 4, Judge; not guilty to counts 1 and 3.

Mr. Hawkins: Your honor, the State recommends that the pleas of guilty not be accepted at this time until the State has an opportunity to try the case on the other two counts.

The Court: How about that, Mr. Purola?

Mr. Purola: Well, I believe, your honor, on the general issue at the arraignment, under criminal Rule 11, defendant is entitled to plead guilty or not guilty to any part of the indictment, and that is what the defendant is doing.

Mr. Hawkins: But the Court is not obligated to accept that plea, your honor.

The Court: That's correct. Procedurally what problem is that going to create by not accepting the plea at this time?

Mr. Purola: I'm not sure I [5] understand the Court's question. What problems?

The Court: Well, there are always problems created when the normal procedures are short-circuited by doing something that is unusual and certainly pleading guilty to two counts in an indictment and pleading not guilty to two counts of an indictment is unusual procedure. It's not unheard of but it is unusual. And I am just wondering, for the defendant's benefit, what problems he is creating for himself by entering a plea at this time?

Mr. Purola: I understand that question, Judge, and I can assure you that it has been carefully thought out and

in the face of an indictment of this kind, given the facts of this case as the defendant knows them, I don't think it poses any problem to him that he is not fully cognizant of, and that he is not fully prepared to litigate.

Obviously, if the State were to proceed on the prosecution of the other two counts as I am sure they would, the defendant [6] would have certain matters to bring to the Court's attention, whichever judge is assigned the cases.

Mr. Hawkins: Your Honor, I believe if the defendant pleads guilty to count 2 which is involuntary manslaughter, and count 4, grand theft, I think that there would be double jeopardy problems if the State chooses to prosecute him on count 1, murder, and count 3, aggravated robbery.

The Court: Perhaps that's why he is pleading.

Mr. Hawkins: I'm sure it is, your honor. But I think if the Court refuses to accept that plea it may prejudice the defendant in the sense that he is going to have to face a jury trial in which he may be convicted of something else, but it doesn't violate any constitutional guaranteed right. And in being fair to both parties, certainly the State of Ohio has the right to present its case to the trier of fact, and ask for a verdict upon the highest provable charges.

Mr. Purola: I don't disagree [7] with that, Judge, except at this stage of the case the Grand Jury has charged this man with these offenses, and the rule that governs this gives him the right to plead guilty or not guilty to that charge. This is a general issue. This is not a plea negotiation. This is the charge.

The Court: I understand. Perhaps we ought to adjourn to chambers and discuss this.

(Thereupon, further discussion was held in the Court's chambers, off the record.)

The Court: You may be seated. You are Kenneth M. Johnson?

Mr. Johnson: Yes, sir.

The Court: The State charges that on the 25th day of January, 1979, at Mentor on the Lake City, Lake County, Ohio, one Kenneth M. Johnson did purposely cause the death of Thomas David Hill, contrary to and in violation of Section 2903.02 of the Ohio Revised Code and against the peace and dignity of the State of Ohio. This act [8] is punishable by an indefinite term of imprisonment of not less than Fifteen (15) years to life, and a fine not more than $15,000.00.

Count 2 of the indictment states that on or about the 25th day of January, 1979, in the City of Mentor on the Lake, County of Lake, and State of Ohio, one Kenneth M. Johnson did cause the death of Thomas David Hill as a proximate result of the said Kenneth M. Johnson's committing or attempting to commit a misdemeanor. This act constitutes a felony of the third degree, contrary to and in violation of Section 2903.02 of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

The State charges in the third count of the indictment that on or about the 25th day of January, 1979, in the City of Mentor on the Lake, County of Lake, and State of Ohio, one Kenneth M. Johnson, together with Denise Elaine DiPaola and Michael D. Polensek, did, in attempting or committing a theft offense, as defined in Section 2913.01 of the Revised Code, or in fleeing immediately [9] after such attempt or offense, have a deadly weapon, to-wit: a .380 caliber automatic pistol, on or about his person or under his control, contrary to and in violation of Section 2911.01 of the Ohio Revised Code

and against the peace and dignity of the State of Ohio. This constitutes a felony of the first degree.

The State charges in the fourth count of the indictment that on or about the 25th day of January, 1979, in the City of Mentor on the Lake, County of Lake, and State of Ohio one Kenneth M. Johnson, together with Denise Elaine DiPaola and Michael D. Polensek, did, with purpose to deprive the owner, Thomas David Hill, of property, to-wit: a portable television; clothing; and miscellaneous clothes and property, knowingly, obtain or exert control over said property without the consent of Thomas David Hill, or a person authorized to give consent, the value of said property being $150.00 or more, a fourth-degree felony, against the peace and dignity of the State of Ohio in violation of the Ohio Revised Code, Title 29 Section 2913.02.

[10] Now, the first count of the indictment requires, if convicted, a penalty of not more than life nor less than 15 years, and/or a maximum money fine of $15,000.

The second count of the indictment is a felony of the third degree and a felony of the third degree is punishable by a minimum term of one year, one and a half years, two years, three years, a maximum of ten years, and/or a maximum money fine of $5,000.

The third count of the indictment is a felony of the first degree and that is punishable by a minimum term of four, five, six or seven years, a maximum of 25 years, and/or a maximum money fine of $10,000.

The last count of the indictment is a fourth degree felony and that is punishable by a minimum term of incarceration of 6 months, one year, one and a half years or two years, a maximum of five years, and/or a maximum money fine of $2,500.

Now, do you understand the charges that are made against you and the possible penalties that you face?

Mr. Johnson: Yes, sir, your honor.

[11] The Court: Very well. The Court acknowledges that heretofore you have entered a plea of guilty, or—excuse me, you have offered to enter a plea of guilty to counts 2 and 4 of the indictment; and a plea of not guilty to counts 1 and 3 of the indictment. The Court at this time will reserve ruling on accepting your plea and would now move to set bail.

Mr. Hawkins: Your honor, the defendant has been absent for 20 months after his arrest. He was originally able to get out of the custody of the State of Ohio because the municipal prosecutor who handled the preliminary hearing made a mistake which forced the judge to dismiss the case against him at the municipal level. Before we could return an indictment Mr. Johnson disappeared and he has been at large ever since that time, though I am sure he has communicated with his family.

Considering the nature of the crimes, the fact that he has already left the area once for 20 months, we would recommend $100,000 cash or surety bond be set on the [12] individual to insure his appearance.

Mr. Purola: I don't intend to make any argument regarding bond, your honor. The bond would be understandably large. Whether or not $100,000 is reasonable is debatable.

The Court: Are you working, Mr. Johnson?

Mr. Johnson: No, sir, your honor. I was working in the state of Tennessee.

The Court: The Court will set the bail at $20,000, 10 percent. If the defense or the prosecutor have any law

they would like the Court to consider regarding the defendant's offer of his pleas, the Court will entertain whatever you present.

Mr. Purola: Thank you, Judge.

The Court: Is there anything further?

Mr. Hawkins: No, sir.

TRANSCRIPT OF PROCEEDINGS

(Hearing Commenced November 26, 1980)

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title Omitted in Printing)

* * * * *

[2] BE IT REMEMBERED, that heretofore, to-wit, on Wednesday, November 26, 1980, being one of the regular days of said Court, before the Honorable James W. Jackson, one of the Judges of the said Court, the above-entitled cause came on for trial [sic] upon the pleadings heretofore filed herein.

* * * * *

[15] The Court: Do you wish to address yourself to the question that was raised in the brief, as why the indictment was framed by the Prosecutor's Office to the Grand Jury as to the four counts and not one count, not two counts?

Mr. Hawkins: Yes. There were three defendants in this particular case, your Honor. Michael Polensek, Denise DiPaola, and Kenneth Johnson. Michael Polensek and Denise DiPaola were indicted for involuntary manslaugh-

ter, because they, the facts did not indicate that they were the ones who actually perpetrated the murder, and for obvious reasons, evidence which we did not have we could not indict them. That was the case with Kenneth Johnson, also, Denise DiPaola and Michael Polensek made statements that indicated, when they were arrested, that the defendant may plead self-defense or that they were anticipating the defendant to plead self-defense. Such a defense would preclude the State from asking for instructions on the lesser included offenses at trial, as in *State v. Nolton*. If the defendant, Kenneth Johnson, plead self-defense, a defense **[16]** which would inspire him in not only murder, but any lesser crimes that the State of Ohio could not ask to instruct on the lesser included offense.

The Court: By the same token, Mr. Hawkins, is the defendant not entitled to, if the self-defense is established, an acquittal upon the proper charge?

Mr. Hawkins: But that is a definition of fact.

The Court: Obviously, but the question of your indictment on the four counts, as to the reason you went and sought the indictment, the indictment on two counts, involuntary manslaughter and grand theft.

Mr. Hawkins: Does the Court hold the State of Ohio at fault for attempting to anticipate the defense?

The Court: No, the Court does not hold the State of Ohio at fault for anticipating the defense.

Mr. Hawkins: Just that we anticipated the defense and the fact that we indicted on a multi-count indictment. This is really not the issue. It is whether you are going to accept the defendant's wishes to avoid the **[17]** prosecution on the more severe counts.

The Court: Well, that is the argument that you are raising.

Mr. Hawkins: Yes, your Honor.

The Court: This is what I am to evaluate, whether or not the defendant understands the nature and voluntariness of the proffered plea to this Court.

Mr. Hawkins: Yes, sir. We feel it is germane in this issue. We feel that even if the defendant understands the nature of the act and his plea of guilty is voluntary, and I am sure it is, our argument is, that the Court is not obligated to accept that plea. The Court is also obligated to protect the interests of the other parties in this case, which in this case is the people of Ohio. The State of Ohio does not consent, again, to his plea. This is not a negotiating plea on our part. We want to prosecute this man for the crimes that he has committed and the charges which he has been indicted on.

Mr. Purola, again, argues about the Grand Jury, and they chose to indict on these charges. They chose to indict on all four charges. They [18] also saw probable cause that he committed the crimes of murder and aggravated robbery.

The Court: Would you distinguish this case between other cases where the Prosecutor's Office does agree and consent to a lesser included offense of this nature?

Mr. Hawkins: Plea negotiations, your Honor, are evils which the State of Ohio and the courts must accept until we have sufficient courts and prosecutors to eliminate the necessity thereof. The basis of plea negotiations can depend upon many things, as the Court knows when it was a trial attorney, sometimes the State will not have evidence at the time of trial sufficient to convict a man of the more serious charges. Sometimes, your Honor, the defendant himself is not that bad of character and the State of Ohio may warrant or feel that he should be given

the benefit of the doubt and is allowed to plead to a lesser included offense. There are various numbers of reasons for plea negotiations, your Honor, but the State of Ohio is always a part of those negotiations. Certainly not just giving him the maximum of five to fifteen years, which means in effect that he could be out on the street in [19] eighteen months. That is what he is trying to do. He is not entering this plea in repentantness. He is not sorry for the murder of Thomas Hill. He is not sorry—

The Court: Well, Mr. Hawkins, we haven't determined at this point, based upon the testimony before this Court at the previous arraignment, what Mr. Johnson's statements are going to be if he pleads to involuntary manslaughter, and he gives sufficient facts from his statements that indicate that he did in fact perpetrate the murder on Thomas Hill.

Mr. Hawkins: The Court should not accept the plea. It would preclude us in prosecuting—

The Court: I believe we are getting into an argument that may be addressed after I address the defendant as to whether I will determine whether or not his proffered plea of guilty is voluntary.

Mr. Hawkins: Well, your Honor, again, if you will please bear with me, I am only trying to do my best for this particular client and this particular case.

The Court: And the Court is [20] fully cognizant of the State's position.

Mr. Hawkins: What is his statement? He cannot offer to plead guilty to involuntary manslaughter and have the Court do anything other than—

The Court: I understand that but let's address ourselves, as long as we are going on this line, Mr. Hawkins, if

the Court, without making any decisions, follows your determination of Rule 11 C(2), and takes the position that there is no basis in this case, as the State of Ohio decides or the Grand Jury indicts on, to not accept the plea of guilty, what is the purpose of the arraignment?

Mr. Hawkins: The bond setting and the arraignments, in pleas of guilty, have been dual in purpose, long before this Court sat. The arraignment is merely to inform the defendant of the charges against him, and to get from him a plea. It's just a matter of setting the participant litigants in the trial at odds with one another. To reach a point where there is a factual issue which can be decided by a trier of fact. The defendant has been informed of the charges against him. He has been arraigned. **[21]** The plea that he wishes to enter is separate and distinct from the arraignment. The Court is not obligated to accept his plea merely because it has arraigned him and he wishes to enter a plea of guilty. The Court can say no, I don't accept your plea, you plead not guilty, and the State of Ohio is going to have the opportunity to prosecute you, and this Court will do its utmost to insure that each and every step of the prosecution against you conforms to the constitutional rights of the United States Government and the State of Ohio.

* * * * *

WRITTEN PLEA OF GUILTY

(Filed November 26, 1980)

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title Omitted in Printing)

I, Kenneth M. Johnson, the defendant in the above-captioned case hereby state that my counsel has explained to me the facts and circumstances surrounding my plea, and the Court and my counsel have informed me of the charge against me and the penalty provided by law for that charge.

Prior to signing this written plea of guilty, the Court has personally addressed and explained to me that I have the following Constitutional rights which I would waive by pleading guilty. I have the right to a jury trial, to confront any witness who testifies against me; to have compulsory process for obtaining witnesses in my favor; the right to an attorney; and that the Court will appoint an attorney to represent me if I cannot afford one. The Court informed me that the State would be required to prove me guilty beyond a reasonable doubt at a trial in which I cannot be compelled to testify against myself. The Court has personally informed me of the maximum penalty involved and the crime to which I am pleading is an offense for which I may be incarcerated. The Court has also informed me that if I was convicted at trial, I would have a right to appeal, and that the Court upon acceptance of my plea of guilty may immediately proceed with judgment and sentence.

I hereby state that I understand these rights and privileges and the possible consequences of a guilty plea, and

I am voluntarily pleading guilty of my own free will and no inducement or promise has been made to me by the Prosecutor's office, my counsel, the Court or any one else to secure my plea of guilty. I hereby waive and reject all of these rights. I hereby enter a plea of "Guilty" to the crime of Grand Theft, Count Four, of the indictment, in violation of Ohio Revised Code Section 2913.02, which carries a possible penalty of not less than ½, 1, 1½, or 2 years nor more than 5 years and a possible fine of between $2,500 and any, [sic] K. J.

/s/ KENNETH M. JOHNSON
Defendant

WITNESSED BY:

/s/ ROBERT L. HITZEL
Bailiff

/s/ ALBERT L. PUROLA
Attorney for Defendant

ENTRY

The Court finds that the defendant was advised of all his constitutional rights and that he understood, waived, and rejected them before entering his plea.

The above plea of guilty is accepted and ordered filed.

/s/ JAMES W. JACKSON
Judge

WRITTEN PLEA OF GUILTY

(Filed November 26, 1980)

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title Omitted in Printing)

I, Kenneth M. Johnson, the defendant in the above-captioned case hereby state that my counsel has explained to me the facts and circumstances surrounding my plea, and the Court and my counsel have informed me of the charge against me and the penalty provided by law for that charge.

Prior to signing this written plea of guilty, the Court has personally addressed and explained to me that I have the following Constitutional rights which I would waive by pleading guilty. I have the right to a jury trial, to confront any witness who testifies against me; to have compulsory process for obtaining witnesses in my favor; the right to an attorney; and that the Court will appoint an attorney to represent me if I cannot afford one. The Court informed me that the State would be required to prove me guilty beyond a reasonable doubt at a trial in which I cannot be compelled to testify against myself. The Court has personally informed me of the maximum penalty involved and the crime to which I am pleading is an offense for which I may be incarcerated. The Court has also informed me that if I was convicted at trial, I would have a right to appeal, and that the Court upon acceptance of my plea of guilty may immediately proceed with judgment and sentence.

I hereby state that I understand these rights and privileges and the possible consequences of a guilty plea, and

I am voluntarily pleading guilty of my own free will and no inducement or promise has been made to me by the Prosecutor's office, my counsel, the Court or any one else to secure my plea of guilty. I hereby waive and reject all of these rights. I hereby enter a plea of "Guilty" to the crime of Involuntary Manslaughter, Count Two, of the indictment, in violation of Ohio Revised Code Section 2903.04, which carries a possible penalty of not less than 1, 1½, 2, or 3 years nor more than 10 years and a possible fine of between $5,000 and $15,000.

/s/ KENNETH M. JOHNSON
Defendant

WITNESSED BY:

/s/ ROBERT L. HITZEL
Bailiff
/s/ ALBERT L. PUROLA
Attorney for Defendant

ENTRY

The Court finds that the defendant was advised of all his constitutional rights and that he understood, waived, and rejected them before entering his plea.

The above plea of guilty is accepted and ordered filed.

/s/ JAMES W. JACKSON
Judge

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS

(Filed December 10, 1980)

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title Omitted in Printing)

This day, to-wit: November 26, 1980, came the Lake County Prosecuting Attorney, John E. Shoop, by and through Judson J. Hawkins, Assistant Prosecuting Attorney, on behalf of the State of Ohio, and the defendant, Kenneth Johnson, being in Court and represented by counsel, Albert L. Purola, Esquire, the defendant plead "Not Guilty" to Count One of the Indictment, to-wit: Murder which carries a penalty of life imprisonment, in violation of Section 2903.02 of the Ohio Revised Code, and Count Three of the Indictment, to-wit: Aggravated Robbery, a felony of the first degree, in violation of Section 2911.01 of the Ohio Revised Code; the defendant plead "Guilty" to Count Two of the Indictment, to-wit: Involuntary Manslaughter, a felony of the third degree, in violation of Section 2903.04 of the Ohio Revised Code, and Count Four of the Indictment, to-wit: Grand Theft, a felony of the fourth degree, in violation of Section 2913.02 of the Ohio Revised Code.

The Court, after advising the defendant of all his legal rights regarding trial and prosecution and finding that the defendant understands such rights, and that his plea is being entered knowingly and voluntarily, accepts the defendant's plea of "Guilty" to a violation of Section 2903.04 of the Ohio Revised Code, a felony of the third degree, and Section 2913.02 of the Ohio Revised Code, a felony of the fourth degree.

Sentencing is hereby deferred until Tuesday, December 9, 1980 at 9:00 a.m.

/s/ JAMES W. JACKSON
Judge

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS

(Filed December 10, 1980)

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

(Title Omitted in Printing)

This day, to-wit: December 9, 1980, came the Lake County Prosecuting Attorney, John E. Shoop, by and through Judson J. Hawkins, Assistant Prosecuting Attorney, on behalf of the State of Ohio, and the defendant, Kenneth Johnson, being in Court and represented by counsel, Albert L. Purola, Esquire, the defendant having heretofore entered a plea of "Guilty" to Count Two of the Indictment, to-wit: Involuntary Manslaughter, a felony of the third degree, in violation of Section 2903.04 of the Ohio Revised Code, and Count Four of the Indictment, to-wit: Grand Theft, a felony of the fourth degree, in violation of Section 2913.02 of the Ohio Revised Code.

The Court having given the defendant the opportunity to speak before judgment and sentence was pronounced against him;

IT IS THE ORDER OF THIS COURT that the defendant, Kenneth Johnson, be and hereby is sentenced to serve an indeterminate term of from Three (3) to Ten (10) Years in the Ohio State Reformatory, Mansfield, Ohio for Count Two and Two (2) to Five (5) Years in the Ohio State

Reformatory, Mansfield, Ohio for Count Four to be served consecutively, and the Clerk of Courts is hereby ordered to issue a warrant, directed to the Lake County Sheriff's Department, to convey defendant to said institution. It is further ordered that the defendant pay the costs of this action, taxed at $....., for which execution is hereby awarded.

This order is imposed under and by virtue of Section 2903.04 and Section 2913.02 of the Ohio Revised Code.

Bond is hereby released.

IT IS SO ORDERED.

/s/ JAMES W. JACKSON
Judge